



## The FTC's New Teeth to Bite Bogus Consumer Review Blurbs

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The Federal Trade Commission added teeth to its prior marketing guidance with the release August 14 of its final trade regulation Rule for Consumer Reviews and Testimonials (“[Rule](#),” 16 CFR Part 465). By setting minimum enforceable standards for what constitute unfair or deceptive consumer marketing practices, the Rule will, in the FTC’s words, “allow [the] agency to strengthen enforcement, seek civil penalties against violators, and deter AI-generated fake reviews.”

Last summer, the agency updated its long-running voluntary [Guides](#) for the current digital age, giving commercial marketers best practices for managing consumer marketing, including insider social media posts, customer review campaigns, paid influencers, fake reviews, and reputation management. The new trade regulation rule, in contrast, gives a new basis for the FTC to continue its consumer fair marketing enforcement activities, including new authority to seek civil money penalties for violations. The rule becomes effective 60 days after publication in the Federal Register – expected by the end of October. This rule is supported by a lengthy Statement of Basis and Purpose, which provides additional information about the FTC’s understanding of what the rule requires and prohibits.

For the rental housing industry, the Rule clarifies new standards for reviews and review solicitation by employees and managers, AI-generated posts, renter social media review campaigns, reputation management practices, and reviews on company web sites. As under existing law, advertisers remain responsible for oversight of their marketing agents and contractors’ activities.

### What’s in the Rule

The trade rule clarifies unfair and deceptive marketing practices applicable to businesses generally under Section 5 of the FTC Act. 15 U.S.C. 45. Specifically:

**Bogus Consumer Reviews, Consumer Testimonials, and Celebrity Testimonials:** The final rule covers reviews and testimonials that misrepresent that they are either a) by a non-existent person (e.g., an AI-generated person), b) by a reviewer who did not have actual experience with the business or its products or services, or c) the experience of the person giving it. Businesses may not create or sell such reviews or testimonials, nor buy such reviews, procure them from insiders, or disseminate them when the business had reason to know the reviews or testimonials were fake or false. However, these general rules do not apply where the company has made generalized requests to purchasers to post their experiences or where the company is engaged in consumer review hosting. 16 CFR § 465.2

**Buying Reviews:** Businesses may not provide compensation or other incentives conditioned on the writing of consumer reviews expressing a particular sentiment, either positive or negative. Advancing beyond the initial Guidance, the final rule specifies that the conditional nature of the offer of compensation or incentive may be expressly or implicitly conveyed. 16 CFR § 465.4

**Insider Reviews and Consumer Testimonials:** Certain reviews and testimonials by company insiders that fail to clearly and conspicuously disclose the reviewer's material connection to the business are prohibited. Officers and managers may not make such reviews, with certain exceptions. Businesses may not disseminate such undisclosed testimonials where the business should have known the review was by an officer, manager, employee, or agent, except where such testimonials result from generalized solicitations to purchasers to post their experiences or where the company is merely engaged in consumer review hosting. Finally, new limits apply to officers or managers when they solicit consumer reviews from immediate relatives, employees, or agents – or when they tell employees or agents to solicit reviews from relatives and such solicitations result in reviews by immediate relatives of the employees or agents. 16 CFR § 465.5

**Company-Controlled Review Websites:** The final rule prohibits a business from misrepresenting that a website or entity it controls provides independent reviews or opinions about a category of products or services that includes its own products or services. 16 CFR § 465.6

**Review Suppression:** Certain threats, intimidation, or false public accusations may not be used to prevent or remove a negative consumer review. Also, where reviews are not displayed based upon their ratings or negative sentiment, a business may not represent that the published reviews on its website represent all or most of the reviews submitted. The rule enumerates a safe harbor for review oversight activities that do not constitute suppression, such as withholding reviews that are obscene or discriminatory or that divulge trade secrets. 16 CFR § 465.7

**Misuse of Fake Social Media Indicators:** Fake indicators of social media influence, such as followers or views generated by a bot or hijacked account, may not be bought or sold. This prohibition is limited to situations in which the buyer knew or should have known that the indicators were fake and misrepresent the buyer's influence or importance for a commercial purpose. 16 CFR § 465.8

## **Applying the Rule**

So now what? Advertisers already familiar with the Guides have a head start in updating their policies and practices to comply with the Rule's new minimum standards for fair advertising. Before the rule takes effect in the near future, smart firms will:

- Update marketing policies and practices in each of the key areas above, including any additional social media monitoring about advertiser properties and/or third-party vendor oversight that may be needed.
- Educate employees, including senior officers (whether they use social media or not), about disclosure obligations around insider posts and limits on direct and indirect solicitations of reviews by relatives, employees, and agents.
- Review new firm policies with third party agents and update agency agreements, if necessary, to ensure contracted third-party marketing entities are aware of their compliance responsibilities, such as clearly permitted activities for third-party review monitoring.

- Consult with experienced counsel to ensure policy development, training, and oversight adequately captures the new rule's obligations. Thoughtful policies, training, and oversight can serve as a valuable corporate defense in the event of subsequent alleged violations of the Rule.

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